

UNITED STATES BANKRUPTCY COURT
DEPARTMENT 2
JUDGE LOUISE DeCARL ADLER, PRESIDING
WEDNESDAY, FEBRUARY 11, 2015

10:00 AM

1 - 14-08096-LA Ch 13 THERESA CAMPBELL

MOTION FOR RELIEF FROM STAY, RS # MJ-2 FILED BY MICKEY JEW ON
BEHALF OF RIDERWOOD GARDENS HOA (Fr 12/3/14)

ATTORNEY: RICHARD E. CHANG (THERESA CAMPBELL)

2 - 11-14266-LA Ch 13 JEROME JOSEPH & MARGARET MARY MCENIRY

TRUSTEE'S MOTION FOR APPROVAL OF MODIFIED PLAN

Tentative Ruling: Opposition to Trustee's Motion to Modify **SUSTAINED**; Motion to modify
DENIED.

This is the trustee's motion to modify debtors' Ch. 13 plan to increase the length of that plan to coincide with the original applicable commitment period of 58 months. Trustee argues that these originally "above-median income" debtors were required to propose a 60 month plan which is now considerably shortened because the debtors' vehicle (being paid through that plan) was totaled and insurance paid off their major creditor.

Trustee's argument is misplaced in the context of a motion to modify (as contrasted with motions to confirm a plan initially). A motion to modify does NOT incorporate the disposable income analysis or the Applicable Commitment Period ("ACP") of Sec. 1325(b). See *In re Sunahara*, 326 B.R. 768 (9th Cir. BAP 2005). The appropriate test is as set forth in *In re Mattson*, 468 B.R. 361 (9th Cir. BAP 2012). There, in connection with an above-median income debtor's motion to modify, the BAP reaffirmed its holding in *Sunahara*, stating that although disposable income is considered in a motion to modify, it is not dispositive. There is a requirement of assessing the debtor's overall financial condition, including the debtor's current disposable income, the likelihood of a significant increase in income or decrease in expenses, the length of time the confirmed plan has been pending, and the risk of default over the remaining period. *Mattson* at 370. And, of course, the modification motion is evaluated by the good faith test under Sec. 1325(a)(3). *In re Goeb*, 675 F. 2d 1386, 1390 (9th Cir. 1982).

When assessed in light of the evidence presented by the debtors in their Declaration (ECF #55), there is no contrary evidence presented by the trustee suggesting that this motion should be granted and the debtors compelled to adhere to an ACP. Accordingly, the motion will be denied.

ATTORNEY: MICHAEL G. DOAN (JEROME JOSEPH MCENIRY, MARGARET MARY MCENIRY)

10:00 AM

3 - 11-20054-LA Ch 13 MELISSA L ARELLANO

TRUSTEE'S MOTION TO DISMISS CASE

Tentative Ruling: Motion to Dismiss **GRANTED**. Debtor has failed to provide information requested by Trustee. (ECF #108).

If counsel for debtor is prepared to accept the tentative ruling, he should inform the trustee and the courtroom deputy and his appearance will be excused. IN that event, he will be awarded the guideline fee indicated by the trustee in ECF #108.

ATTORNEY: BRIAN A. KRETSCH (MELISSA L ARELLANO)

4 - 14-06246-LA Ch 13 TERRY R. & CHERYL D. BURTON

OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN AND MOTION TO DISMISS CASE. FILED BY DAVID L. SKELTON (Fr 11/19/14)

Tentative Ruling: Trustee has failed to post a case status report responsive to counsel's amended Ch. 13 plan filed 2/3/15. Court cannot post a tentative ruling.

ATTORNEY: EVELYN JOHNSON (CHERYL D. BURTON, TERRY R. BURTON)

5 - 14-09032-LA Ch 13 NORRIS WAYNE HILL

OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN; FILED BY JOHN H. KIM ON BEHALF OF WELLS FARGO BANK, N.A. DBA WELLS FARGO DEALER SERVICES.

Tentative Ruling: Objection of Wells Fargo to plan confirmation **SUSTAINED**. Plan denied confirmation; case dismissed.

Debtor is unemployed, having lost his job immediately after this case was filed. No payments have been made since the commencement of this case on this depreciating asset. Plan is not feasible.

If counsel for debtor is prepared to accept this tentative ruling, he should notify counsel for WF and the courtroom deputy and appearances will be excused. IN that event, counsel for WF shall submit order on this tentative; counsel for debtor will be awarded guideline fees for a consumer Ch. 13 case, subject to funds on hand.

ATTORNEY: JOHN C. COLWELL (NORRIS WAYNE HILL)

10:00 AM

6 - 11-06360-LA Ch 13 CARL NEILSON DAVIS

TRUSTEE'S MOTION TO DISMISS CASE

Tentative Ruling: Motion to Dismiss **GRANTED**. Debtor has not provided trustee with requested current income information nor with copies of 2013 tax returns or first two pages of 2011 and 2012 income tax returns. Further, debtor has not filed amended schedules I and J nor a motion to modify. Finally, debtor has not remained current on plan payments.

If counsel for the debtor is prepared to accept the tentative ruling, she should notify the trustee and the courtroom deputy and appearances will be excused. In that event, counsel will be awarded the guideline fee for defense of a dismissal motion and should notify the trustee of the net amount of her admin. exp. claim.

ATTORNEY: MAUREEN A. ENMARK (CARL NEILSON DAVIS)

7 - 10-12412-LA Ch 13 MARTIN C & CAROLINE S. TOWER

TRUSTEE'S MOTION FOR APPROVAL OF MODIFIED PLAN

Tentative Ruling: Motion **GRANTED**. Unopposed.

No appearances required. Submit order.

ATTORNEY: RICHARD E. CHANG (CAROLINE S. TOWER, MARTIN C TOWER)

8 - 11-04108-LA Ch 13 ROLANDO FLORES & DIGNA MATUSALEM DE VERA

TRUSTEE MOTION FOR APPROVAL OF MODIFIED PLAN

Tentative Ruling: **MATTER CONTINUED TO 3/25/2015 at 10:00 a.m.** to permit counsel for debtors to file and timely give notice of a modified plan for the same date/time.

No appearance required at this hearing.

ATTORNEY: VICTOR LUKE (DIGNA MATUSALEM DE VERA, ROLANDO FLORES DE VERA)

9 - 11-08666-LA Ch 13 KENNETH J. HEBERT

DEBTOR'S MOTION FOR APPROVAL OF MODIFIED PLAN

Tentative Ruling: Court is unclear from "dueling" case status reports (ECF #81 and 82) whether Ch. 13 trustee is now satisfied with proof of ability of son to make contributions as promised. If trustee is satisfied and modified plan at ECF #71-1 is confirmable without objection, please notify the Ch. 13 trustee and appearances will be excused and the modified plan confirmed.

In that event, court approves guideline fee request at ECF #84.

ATTORNEY: JONATHAN N. VAKNIN (KENNETH J. HEBERT)

10:00 AM

10 - 11-15628-LA Ch 13 LEE CHARLES & BEVERLY JOYCE LASOF

TRUSTEE'S MOTION FOR APPROVAL OF MODIFIED PLAN

Tentative Ruling: Motion **GRANTED**. Unopposed.

No appearance required. Submit order.

ATTORNEY: LARISSA L. LAZARUS (BEVERLY JOYCE LASOF, LEE CHARLES LASOF)

ATTORNEY: MARK L. MILLER (BEVERLY JOYCE LASOF, LEE CHARLES LASOF)

11 - 12-10432-LA Ch 13 RAYMOND N & BENITA P FLEISCHHACKER

MOTION FOR APPROVAL OF MODIFIED PLAN (Fr 12/17/14)

Tentative Ruling: It appears from status report filed by counsel (ECF #90) that the trustee's objection was resolved by the PCM dtd. 2/3/15. If the trustee agrees, he should notify counsel for the debtor and the courtroom deputy, appearances will be excused and the modified plan dtd 12/29/14 as further modified by the PCM will be confirmed.

In that event, counsel will be awarded the guideline fee requested.

ATTORNEY: VIKRANT CHAUDHRY (RAYMOND & BENITA FLEISCHACKER)

12 - 12-14730-LA Ch 13 OMAR MARIANO & SOCORRO GUIDO

DEBTOR'S MOTION TO MODIFY CHAPTER 13 PLAN

Tentative Ruling: It appears the PCM dtd 1/27/15 resolves the trustee's objection to the modified plan dtd 12/12/14. If the trustee is in agreement, he should notify counsel for the debtor and the courtroom deputy and appearances will be excused. In that event, counsel shall submit an order confirming the plan as modified by the PCM forthwith.

Court will award guideline fees for counsel's services. The request for costs reimbursement (ECF #66) will be subject to further court order.

ATTORNEY: DANIEL WIEDECKER (OMAR MARIANO GUIDO, SOCORRO GUIDO)

ATTORNEY: JOHN C. COLWELL (OMAR MARIANO GUIDO, SOCORRO GUIDO)

13 - 13-04970-LA Ch 13 VERONICA FLORES

TRUSTEE'S MOTION TO DISMISS CASE

Tentative Ruling: Motion to Dismiss **SUSPENDED ON CONDITIONS:** Debtor to make timely plan payments on 2/10/15, 3/10/15 and 4/10/15. A timely plan payment is one which is posted to the trustee's account not later than 14 days from the date the plan payment is due. If the debtor timely makes the plan payments as ordered, this motion to dismiss will go off calendar and the debtor's plan allowed to continue. If the debtor fails to make any payment timely, the trustee may submit an order dismissing this case without further hearing.

If counsel for the debtor is prepared to accept the tentative ruling, he should notify the trustee and the courtroom deputy and appearances will be excused. In that event, counsel will be awarded a guideline fee as set forth in ECF #46.

ATTORNEY: JOHN C. COLWELL (VERONICA FLORES)

ATTORNEY: DANIEL WIEDECKER (VERONICA FLORES)

10:00 AM

14 - 14-06256-LA Ch 13 JOANN GEOVANNA HALE

- 1) MOTION TO DISMISS AND OBJECTION TO CONFIRMATION FILED BY VICTOR E. RAMIREZ ON BEHALF OF B.C. DAGE, INC.

Tentative Ruling: **MATTER CONTINUED TO 4/22/15 at 10:00 a.m.** to permit conclusion of valuation hearing scheduled for hearing in Dept. 4 on 4/8/15.

Parties to file case status report one week in advance of continued hearing. If creditor's objection is rendered moot by valuation hearing, court would appreciate it if this objection were promptly withdrawn.

No appearances required at this hearing.

- 2) OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN AND MOTION TO DISMISS CASE FILED BY DAVID L. SKELTON (Fr 11/19/14)

Tentative Ruling: **MATTER CONTINUED TO 4/22/15 at 10:00 a.m.** to permit conclusion of valuation hearing scheduled for hearing in Dept. 4 on 4/8/15.

Parties to file case status report one week in advance of continued hearing.

Court understands all of trustee's objections are now resolved except for an order from the 4/8/15 valuation hearing.

Appearances excused.

ATTORNEY: STEVEN A. ALPERT (JOANN GEOVANNA HALE, JoAnn Geovanna Hale)

15 - 14-08890-LA Ch 13 RAYMOND D. & LISA A. KITLAS

MOTION FOR A FINDING THAT DEBTOR(S) NOT ENTITLED TO A DISCHARGE FILED BY TRUSTEE

Tentative Ruling: Trustee's Motion **GRANTED**. Debtor not entitled to discharge under these facts.

Debtors filed a Ch. 13 in 1/12; converted to a Ch. 7 in 5/12 and received a discharge in 9/12. As of the date of their conversion, according to 11 U.S.C. Sec. 348(a) the case became one filed under Ch.7 for purposes of Section 1328(f). As their Ch. 13 case filed in 11/14 was filed fewer than 4 years after filing their prior Ch.7, they are not eligible for a discharge under 11 U.S.C. Sec. 1328(f). See *In re Finney*, 486 B.R. 177 (9th Cir. BAP 2013); See also, Rutter Group, *Practice Guide Bankruptcy*, para. [22:1289]

If counsel for debtors is prepared to accept the tentative ruling, he should notify the trustee and the courtroom deputy and appearances will be excused. In that event he will be awarded a guideline fee for a misc. motion.

ATTORNEY: JOSEPH C. LA COSTA (LISA A. KITLAS, RAYMOND D. KITLAS)

02:00 PM

1 - 10-13625-LA Ch 13 ANTONIO & MARTHA M CASTILLO

TRUSTEE'S MOTION TO DISMISS CASE

Tentative Ruling: Motion to Dismiss **GRANTED**. Debtors have not made any payments since the filing of the motion on 11/21/14. Further, debtors have not filed a Declaration in support of their Opposition to this motion which makes this motion unsupported by evidence.

NOTE TO COUNSEL: It is NOT appropriate to file a request for hearing without a supporting declaration.

If counsel for the debtors is prepared to accept the tentative ruling, she should notify the Ch. 13 trustee and the courtroom deputy and her appearance will be excused. Court declines to award a guideline fee in this matter as counsel submitted an incomplete Request for Hearing and has wasted the court's and the trustee's time in doing so.

ATTORNEY: LARISSA L. LAZARUS (ANTONIO CASTILLO, MARTHA M CASTILLO)

2 - 12-00203-LA Ch 13 MATIAS BAUTISTA

TRUSTEE'S MOTION TO DISMISS CASE

Tentative Ruling: Motion to Dismiss **SUSPENDED ON CONDITIONS:** Debtor to make timely plan payments of \$926/mo. on 3/9/15, 4/9/15 and 5/9/15. A timely plan payment is one which is posted to the trustee's account no later than 14 days from the above-stated due date. If he makes all payments timely, this motion will go off calendar and the debtor's plan allowed to continued. If he fails to make any payment on time, the trustee may upload an order dismissing this case without further hearing.

Court understands from trustee's case status report (ECF #73) that counsel for debtor negotiated this arrangement and has waived fees. Accordingly, appearances will be excused.

ATTORNEY: JANET GUTIERREZ (MATIAS BAUTISTA)

3 - 10-18883-LA Ch 13 SERGIO ROMANO & AIDA ZURITA DE ROMANO

DEBTOR'S MOTION FOR APPROVAL OF MODIFIED PLAN

Tentative Ruling: Modified Plan **CONFIRMED**. Trustee has no opposition.

Appearance excused; submit order confirming forthwith. Guideline fees as requested are awarded.

ATTORNEY: DAYNA C. CHILLAS (AIDA ZURITA DE ROMANO, SERGIO ROMANO)

02:00 PM

4 - 12-06391-LA Ch 13 GLORIA LIMA

1) TRUSTEE'S MOTION TO DISMISS CASE (Fr 1/28/15)

Tentative Ruling: **MATTER OFF CALENDAR.** Modified plan has been confirmed. Court has previously awarded guideline fees to counsel in this matter.

No appearance required.

2) DEBTOR MOTION TO MODIFY CHAPTER 13 PLAN

Tentative Ruling: Modified Plan dtd. 12/22/14 as modified by the pre-confirmation modification dtd 2/2/15 is **CONFIRMED**.

Appearance excused. Submit confirmation order forthwith. Guideline fee awarded.

3) DEBTOR'S APPLICATION TO EXCUSE PLAN PAYMENTS

Tentative Ruling: Court is unclear whether this matter is subsumed into Motion to Modify. Trustee has not filed separate Opposition to the motion to excuse plan payments but did file a Conditional Non-Opposition to the motion to modify.

Counsel for debtor and trustee shall confer before this hearing and resolve this discrepancy. If (as the court suspects) the motion to excuse is part of the motion to modify and confirmation of the modified plan resolves this issue, the trustee is authorized to represent same to the court without the appearance of counsel.

ATTORNEY: ANN MARIE ZIMMERMANN (GLORIA LIMA)

5 - 13-04627-LA Ch 13 RODNEY TADAYOSHI & MILISSA A. TAKASHIMA

DEBTOR'S MOTION FOR APPROVAL OF MODIFIED PLAN

Tentative Ruling: **MATTER CONTINUED TO FEB. 25, 2015** **at 2:00 p.m.** to permit counsel for debtors to provide information and funds requested by the trustee in his statement dtd 2/9/15 (ECF #54)

No appearance required at this hearing.

ATTORNEY: STEVEN M. BENSON (MILISSA A. TAKASHIMA, RODNEY TADAYOSHI TAKASHIMA)

ATTORNEY: ROSE MARIE GARCIA (MILISSA A. TAKASHIMA, RODNEY TADAYOSHI TAKASHIMA)

02:00 PM

6 - 13-04931-LA Ch 13 VANESSA SARA MEZA

TRUSTEE'S MOTION TO DISMISS CASE

Tentative Ruling: Motion to Dismiss **SUSPENDED ON CONDITIONS**. Debtor is to make timely plan payments of \$275./mo. due 3/9/15, 4/9/15 and 5/9/15. A timely plan payment is one which is posted to the trustee's account no later than 14 days after the above-stated due date. If she makes her payments timely, this motion will go off calendar and her Ch.13 case allowed to continue. If she fails to make any of the payments timely, the trustee may submit an order dismissing this case without further hearing.

If counsel for debtor is prepared to accept the tentative ruling, he should notify the trustee and the courtroom deputy and appearances will be excused. In that event he will be awarded the guideline fee of \$490.

ATTORNEY: JOHN C. COLWELL (VANESSA SARA MEZA)
ATTORNEY: DANIEL WIEDECKER (VANESSA SARA MEZA)

7 - 13-05369-LA Ch 13 BENJAMIN M. ZARZA

- 1) MOTION FOR RELIEF FROM STAY, RS # RCO-1 FILED BY ERICA LOFTIS ON BEHALF OF THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK AS TRUSTEE (Fr 12/17/14)

Tentative Ruling: Motion for Relief from Stay **GRANTED**. Debtor has not sold house and has no other plan to satisfy this creditor.

If counsel for debtor is prepared to accept the tentative ruling, she should notify counsel for the creditor and the courtroom deputy and appearances will be excused. She has previously been awarded guideline fees.

- 2) DEBTOR'S MOTION FOR APPROVAL OF MODIFIED PLAN (Fr 12/17/14)

Tentative Ruling: **MATTER OFF CALENDAR AS MOOT**. Case being dismissed.

If counsel for debtor is prepared to accept the tentative ruling, she should notify the trustee and the courtroom deputy and her appearance will be excused. She has previously been awarded guideline fees.

- 3) TRUSTEE'S MOTION TO DISMISS CASE (Fr 12/17/14)

Tentative Ruling: Motion to Dismiss **GRANTED**. Debtor's home has not sold and he has not made current plan payments.

If counsel is prepared to accept the tentative ruling, she should notify the trustee and the courtroom deputy and her appearance will be excused. She has previously been awarded guideline fees.

ATTORNEY: MONTINE NYHAN (BENJAMIN M. ZARZA)

8 - 14-03495-LA Ch 13 JAMES D. & NADINE L DEBRODIE

DEBTOR'S MOTION FOR APPROVAL OF MODIFIED PLAN

Tentative Ruling: Modified Plan **CONFIRMED**. Trustee has no Opposition. (ECF #39)

Appearance excused. Guideline fee awarded. Submit order forthwith.

ATTORNEY: AHREN TILLER (JAMES D. DEBRODIE, NADINE L DEBRODIE)

02:00 PM

9 - 14-09141-LA Ch 13 HAZEM ELSAWAF

OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN FILED BY MARK D. ESTLE ON BEHALF OF ONEWEST BANK N.A. FORMERLY KNOWN AS ONEWEST BANK, FSB.

Tentative Ruling: **MATTER OFF CALENDAR.** Objecting creditor has withdrawn its objection in view of modified plan submitted by debtor. (ECF #22).

No appearances required.

ATTORNEY: D.J. RAUSA (HAZEM ELSAWAF)

10 - 11-02105-LA Ch 13 JOSE REYES & MARIA LOURDES TAPIA

MOTION FOR RELIEF FROM STAY, RS # EAT-1 FILED BY DARLENE C. VIGIL ON BEHALF OF WILMINGTON TRUST, COMPANY (Fr 1/14/15)

Tentative Ruling: **MATTER CONTINUED TO 3/25/15 AT 2:00 P.M.** per stipulation of parties.

No appearances required at this hearing.

ATTORNEY: DAYNA C. CHILLAS (JOSE REYES TAPIA, MARIA LOURDES TAPIA)

11 - 14-05383-LA Ch 13 MARGARITO ARCE

OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN FILED BY JENNIFER C. WONG ON BEHALF OF GSR MORTGAGE LOAN (Fr 1/14/15)

Tentative Ruling: **MATTER OFF CALENDAR.** Objecting creditor withdrew objection on 1/9/15 (ECF #27).

Appearances excused.

ATTORNEY: BRUNO FLORES (MARGARITO ARCE)